NOT DESIGNATED FOR PUBLICATION
AR COURT OF APPEALS
KAREN R. BAKER, JUDGE DIVISION II

CACR05-906

MAY 3, 2006

ELVIE TREMAIN ARNOLD

APPELLANT

v.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT
[CR2004-5171]

HONORABLE JOHN LANGSTON, CIRCUIT JUDGE

AFFIRMED

Appellant Elvie Tremain Arnold was convicted of possession of cocaine with intent to deliver and possession of marijuana, and was sentenced to a total of one year imprisonment with seventy-two months suspended. At trial, appellant made a timely motion to dismiss based on the lack of proof of his possession and of his intent to deliver. We find no error and affirm.

On October 12, 2004, appellant was driving his car on Cantrell Road in Little Rock, Arkansas. Officer Brian Eshenbaugh was patrolling the area and observed that the license plate displayed on appellant's car was hanging by one screw. He ran a routine ACIC search on the plate and learned that the license plate was registered to a pickup truck. The officer made a traffic stop of the vehicle because of the fictitious tag violation. The officer approached the car, observed appellant in the car alone, and requested appellant's driver's license, insurance and registration. The officer also noticed a purple-colored drink next to appellant. When appellant could not provide proof of insurance, registration, or bill of sale of the vehicle, the officer

removed appellant from the car. When the officer asked if appellant had anything on his person, appellant said, "Yes, I have syrup," and produced a baby bottle filled with codeine cough syrup. The officer arrested appellant, conducted an inventory search and discovered plastic bags in the dashboard where the car's radio is normally installed. One baggie contained marijuana and the second baggie contained over seven grams of cocaine. The officer also seized $500 from appellant's person.

Appellant testified that he was initially unaware as to how the cocaine came to be in the car's radio space; however, he later learned that a worker at the automotive repair shop where his car had been until earlier that day put the bags of cocaine and marijuana in his car. Appellant then called Darnell Craig, who testified that he was a mechanic at the repair shop where appellant had left his car. He stated that he drove appellant's car to get cigarettes and while at the store, saw a plastic bag lying on the ground. He picked the bag up and placed it in the space of the missing stereo. He claimed that he did not know what was in the bag at that time, but admitted that he smoked a little marijuana.

On appeal, appellant argues that he presented evidence establishing that another person had access to appellant's vehicle and placed the plastic baggies in appellant's car and that the testimony he presented on this issue was not rebutted by the prosecution, and that appellant testified that he was not aware that the baggies were in his car until the officer removed them.

A motion to dismiss, identical to a motion for a directed verdict in a jury trial, is a challenge to the sufficiency of the evidence. *Walker v. State*, 77 Ark. App. 122, 72 S.W.3d 517 (2002). In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Garner v. State,* 35 Ark. 82, 131 S.W.3d 734 (2003). Substantial evidence is evidence forceful enough to compel a

conclusion one way or the other beyond suspicion or conjecture. *Haynes v. State,* 346 Ark. 388, 58 S.W.3d 336 (2001). This court views the evidence in the light most favorable to the verdict, and only evidence supporting the verdict will be considered. *Stone v. State,* 348 Ark. 661, 74 S.W.3d 591 (2002). A fact-finder may accept or reject any part of a witness's testimony, and its conclusion on credibility is binding on this court. *E.g., White v. State*, 47 Ark. App. 127, 886 S.W.2d 867 (1994).

The State need not prove that the accused physically possessed the contraband in order to sustain a conviction for possession of a controlled substance if the location of the contraband was such that it could be said to be under the dominion and control of the accused. *Walley v. State*, 353 Ark. 586, 112 S.W.3d 349 (2003). This control can be inferred from the circumstances. *Nichols v. State*, 306 Ark. 417, 815 S.W.2d 382 (1991). Our supreme court has held that a single occupant in a borrowed car or car owned by another is only subject to the general inquiry for constructive possession, instead of the increased inquiry afforded those in a joint-occupancy situation. *Polk v. State*, 348 Ark. 446, 73 S.W.3d 609 (2002). Appellant in this case owned the car and was the sole occupant. Due to the close proximity of the two baggies containing the contraband in plain view and immediately accessible to appellant from the opening in the dashboard, the circuit court could reasonably infer the contraband was under appellant's control. The trial court was not required to believe the testimony of appellant or his witness. Furthermore, possessing an amount equal to or above one gram of cocaine creates a "rebuttable presumption" that an individual possesses the contraband with "intent to deliver." Ark. Code Ann. § 5-64-401(d) (Supp. 2003). Because appellant was in possession of over seven times the presumptive amount, the evidence was sufficient to prove the element of his intent. *Kilpatrick v. State*, 322 Ark. 728, 912 S.W.2d 917 (1995).

Therefore, we hold that appellant's convictions were supported by substantial evidence, and the trial court did not err in denying his motion to dismiss.

Accordingly, we affirm.

PITTMAN, C.J., and ROBBINS, J., agree.